

EXHIBIT 13

MAO DECLARATION ISO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

DOCUMENT SOUGHT TO BE SEALED

1 ** C O N F I D E N T I A L **

2 ** ATTORNEYS' EYES ONLY **

3 UNITED STATES DISTRICT COURT

4 NORTHERN DISTRICT OF CALIFORNIA

5 SAN FRANCISCO DIVISION

6 Case No. 3:20-CV-04688-RS

7 -----x

8 ANIBAL RODRIGUEZ, et al. individually
and on behalf of all others similarly
situated,

9

Plaintiff,

10

11

- against -

12

13

GOOGLE LLC,

14

Defendant.

15

-----x

June 26, 2023

16

10:05 a.m.

17

18 Videotaped Deposition of JONATHAN
19 HOCHMAN, taken by Defendant, pursuant to
20 Notice, held at the offices of Willkie Farr
21 & Gallagher LLP, 787 Seventh Avenue, New
22 York, New York, before Todd DeSimone, a
23 Registered Professional Reporter and Notary
24 Public of the State of New York.

25

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ALSO PRESENT:

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20

JOHN BLACK (Via Zoom)

21

PAUL BAKER, Videographer

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1 THE VIDEOGRAPHER: Good morning.
2 We are going on the record at 10:05
3 a.m. eastern daylight time on Monday,
4 June 26th, 2023. Please note that the
5 microphones are sensitive and may pick
6 up whispering and private
7 conversations. Please turn off all
8 cell phones at this time.

9 This is media unit one of the
10 video-recorded deposition of Jonathan
11 Hochman in the matter of Anibal
12 Rodriguez, et al., versus Google LLC,
13 filed in the United States District
14 Court, Northern District of California.
15 This deposition is being held at
16 Willkie Farr & Gallagher LLP located at
17 787 Seventh Avenue, New York, New York.

18 My name is Paul Baker and I am
19 the videographer, the court reporter is
20 Todd DeSimone, and we are both from
21 Veritext.

22 Appearances have been noted on
23 the stenographic record. Would the
24 court reporter please swear in the
25 witness.

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J O N A T H A N H O C H M A N,
called as a witness, having been first
duly sworn, was examined and testified
as follows:

EXAMINATION BY MR. SANTACANA:

Q. Good morning, Mr. Hochman. Our
appearances are already on the record, so
we will just get started.

You have been deposed before?

A. Yes.

Q. How many times?

A. Over 50.

Q. Okay. And you have served as a
litigation expert before?

A. Yes.

Q. How many engagements roughly?

A. Hundreds.

Q. Hundreds. You are currently
retained by the plaintiffs in this action?

A. Yes, I believe so, the class.

Q. And how many hours have you
spent roughly on this engagement?

A. I'm not quite sure of my
personal hours, but I know that between

1 look at the table of contents, because I
2 don't know myself. Okay, oops, this table
3 of contents -- let me go into -- let me
4 check in one other location here.

5 Q. I think you mean Appendix G,
6 tab 4, but I could be wrong.

7 A. Yeah, let's take a look at
8 that.

9 Q. It is pretty long, so maybe
10 I'll break down the question for a moment.

11 A. Sure.

12 Q. My first question is just did
13 you attempt in this case to join -- strike
14 that. Let me try again.

15 Did you attempt in this case to
16 find evidence that Google had joined in the
17 same log device ID and GAIA ID? Was that
18 one of the things you did?

19 A. I think that had we noticed
20 that, had I noticed that, I would have
21 documented it.

22 Q. Okay.

23 A. So I --

24 Q. I don't think you did.

25 A. Yeah, I don't think I

1 necessarily found an indication of joining.

2 So just to be clear, joining

3 and linking are two different things.

4 Joining means putting the two pieces

5 together in the same place. Linking means

6 that there is just a logical connection

7 between the two pieces of data, okay?

8 There is a common identifier or there is a

9 common fingerprint, okay? There might

10 be -- data might be stored in separate

11 places but there is a common -- there is a

12 link between them.

13 Q. Got it.

14 A. Okay? So I'm using the

15 standard of linking, not of joining.

16 Q. I understand. So I hadn't

17 heard that distinction before, but join we

18 will use to mean actually joined together

19 in the same place, whereas linking is about

20 the availability of a mapping that may or

21 may not have been used to join. Is that

22 fair to say?

23 A. We don't know whether -- we

24 don't know whether someone has joined it or

25 not, we just know that it is linked, there

1 is a link. Think of it as quantum
2 entanglement. You've got two particles,
3 they are entangled, they can go as far
4 apart as you want but they are still
5 linked.

6 Q. Right. But if you can only
7 observe one --

8 A. Whatever you observe in one you
9 are going to observe in the other.

10 Q. Well, actually if you observe
11 it, it will screw it up, is so --

12 A. Well, it collapses the quantum
13 state, so you get one or the other,
14 outputs, if it is zero or 1.

15 Q. So I want to be really clear
16 though -- well, okay, so if you had seen a
17 join you would have documented it. You
18 didn't document a join that Google had
19 performed. Did you attempt to perform any
20 joins of linked GAIA and non-GAIA data
21 together?

22 A. So I'm not actually needing to
23 join, I'm just looking for links, because
24 the idea is if there is a link somebody who
25 gets both pieces of data can know that that

1 data is associated with that user.

2 Q. Right. So like --

3 A. And also, by the way, you don't
4 necessarily need to even link -- you don't
5 need to join the data within Google's
6 system. If you get some data out of
7 Google's system that has an identifier and
8 then you go to some third-party system and
9 get some data, it can be linked there, or
10 you can get, off the person's phone, you
11 can get it.

12 So the problem, as I have been
13 saying from the start, occurs at the moment
14 that sensitive information is collected
15 when the user has indicated they don't want
16 that sensitive information collected,
17 because the actual collection hurts the
18 user.

19 Minimally it hurts the user by,
20 you know, chewing up their mobile device
21 battery and tying up their bandwidth and
22 deteriorating the performance of their
23 device. But, additionally, it hurts them
24 by putting them at risk of their data being
25 exposed when they have said I don't want

1 this data collected because I'm afraid for
2 it to be exposed, if someone collects it,
3 that is a problem. I can even give you
4 another analogy --

5 Q. Well, I think I understand what
6 you're saying, but we can come back to your
7 analogy later. Maybe you can slip it into
8 a different answer.

9 My next question is -- what I'm
10 trying to understand is just what you did
11 and didn't do, that's all, in this --
12 Appendix G is about your data testing and
13 your procedures and all that. In this case
14 you received what we've discussed are GAIA
15 logs and non-GAIA logs, right?

16 A. Yes.

17 Q. Did you undertake any attempts
18 to find a match between entries in one of
19 those and the other?

20 A. I mean, I think we've
21 documented some ways that this stuff can be
22 matched up, okay? You know, it doesn't
23 necessarily mean I found evidence that
24 Google joined them.

25 Q. Right. I'm not saying Google,

1 that the sample data we got was not large
2 and apparently not representative, so it
3 sort of is not really amenable to that kind
4 of statistical analysis. You can't -- you
5 need to have a statistically valid sample
6 and a representative sample in order to do
7 statistical analysis. So I wouldn't draw
8 the conclusions that he's trying to draw by
9 doing an analysis on that small sample set.

10 Q. Fair enough. My question was
11 actually about -- or where I was headed was
12 you note in I think Appendix G that there's
13 some age and gender information in some of
14 these data entries, in some of the logs
15 from Google Analytics that you reviewed.
16 Do you recall that?

17 A. Yes.

18 Q. Can you say whether that
19 demographic information came from Google or
20 from the app developer?

21 A. A great question, and all I
22 have observed is that data was there in the
23 logs.

24 Q. Okay. But you're not sure
25 whether it's because Google supplied it to

1 the developer based on some other
2 information Google had or whether the
3 developer supplied it to Google based on
4 some other information the developer had?

5 A. Yeah, in general I have
6 additional questions about these logs that
7 I would love to be able to ask someone
8 knowledgeable about them, and I just
9 haven't had the opportunity to get all the
10 discovery that I would like to have. But
11 that is what it is.

12 Q. Okay. The web and app activity
13 control I think you say should only cover
14 app activity data, right?

15 A. I think I've talked about web
16 view data also.

17 Q. Web views inside of apps?

18 A. Correct.

19 Q. I'll include that in app
20 activity. But really all I'm asking is --

21 A. I think you should also include
22 the ad activity within the app.

23 Q. Okay. So the app activity in
24 your mind includes any advertising activity
25 within that app?

1 A. They are all just activities.
2 It is a remote transaction occurring
3 between the app and the server, and data is
4 going back and forth.

5 Q. Right, okay. So we will come
6 back to ads.

7 We talked about the first open
8 analytics event earlier.

9 A. Yes.

10 Q. So when Google logs a device ID
11 in the first open event, did you see any of
12 those in the logs?

13 A. Yeah, probably we did, because
14 we would have had first open events. I'm
15 just sort of inferring it. Whatever we
16 found, we've documented.

17 Q. Okay. Did you see any evidence
18 that Google leveraged those events, just to
19 use them as an example, from sWAA-off users
20 to perform advertising?

21 A. I think my inference is that
22 those events would be -- it would be very
23 important to count those as conversions.
24 If someone had been running an app
25 promotion campaign, they want to get people

1 to install apps, so as soon as someone does
2 that first open, the software development
3 kit, which seems to behave the same --
4 transmit the same information with sWAA and
5 WAA on or off, the only difference I've
6 documented is where that information seems
7 to be stored according to Google's
8 explanation.

9 The conversion tracking is very
10 important there, because that's the
11 justification for the advertiser, it is the
12 justification to charge the advertiser
13 money for advertising is that hey, this
14 advertising works.

15 Q. Apart from the recordkeeping
16 associated with charging the advertiser
17 that you're talking about, did you see any
18 evidence of Google using sWAA-off
19 conversion events for any other purpose?

20 A. I mean, I think that using the
21 sWAA-off conversion events to track
22 conversions is the big use of them. I
23 didn't necessarily --

24 Q. Understood.

25 A. -- look for them to be used for

1 anything else. Just knowing they are used
2 to track conversions is the significant
3 thing.

4 Q. Okay, understood. But apart
5 from the recordkeeping associated with
6 charging the advertiser, did you see
7 evidence of Google using sWAA-off
8 conversion events to personalize
9 advertising?

10 A. Okay, so I have a couple of
11 different questions, a couple of different
12 answers to that question.

13 One answer, the simple answer,
14 the first-order answer is that I didn't see
15 that being used to further personalize ads,
16 although I do know from having been an
17 advertiser that Google seems to keep
18 statistics on users about their propensity
19 to convert and that there are some what
20 Google reps have told me are safe settings
21 in the ad platform that you can use to try
22 to essentially allow Google to boost your
23 bids in the auction when they observe a
24 user who is more likely to convert, and
25 that these options have been available at

1 least in the past and maybe still.

2 So there is potentially some
3 second-order effect beyond just the
4 immediate conversion. I mean, if you know
5 that somebody is converting, that
6 information is valuable in more ways -- in
7 more ways than just the immediate
8 conversion and immediate ad revenue that's
9 justified by that conversion.

10 Q. So you skipped ahead, that's
11 where I was going next. Did you see
12 evidence in the case that Google uses
13 sWAA-off conversion measurements to inform
14 what you were just talking about, which is
15 user propensity to convert?

16 A. Well, I think there is some
17 indirect evidence in that I've cited a
18 variety of Google documents that talk about
19 how data is used to improve their products,
20 you know, data that is collected, including
21 sWAA and WAA-off data can be used to
22 improve Google products, it can be used for
23 machine learning. So that's sort of an
24 indirect use.

25 But I didn't investigate

CERTIFICATION

I, TODD DeSIMONE, a Notary Public for
and within the State of New York, do hereby
certify:

That the witness whose testimony as
herein set forth, was duly sworn by me; and
that the within transcript is a true record
of the testimony given by said witness.

I further certify that I am not related
to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 26th day of June, 2023.



TODD DESIMONE

* * *